

IN THE SUPREME COURT STATE OF NORTH DAKOTA

NOTICE OF CONSULTATION Supreme Court No. 20210177

In the Matter of the Judicial Vacancy in District Judgeship No. 9, with
Chambers in Mandan, South Central Judicial District

This report is submitted pursuant to North Dakota Supreme Court Administrative Rule 7.2, Section 4, and in response to Supreme Court Notice of Consultation No. 20210177.

We ask that the Supreme Court consider the Rule 7.2 factors and order the judgeship to remain in the South Central Judicial District, with chambers in Mandan.

Rule 7.2 Section 4 Criteria

1. Population

The South Central Judicial District is comprised of Burleigh, Emmons, Grant, McLean, Mercer, Morton, Oliver, Sheridan, and Sioux Counties. The U.S. Census Bureau estimates that 157,646 people lived in the district in 2019. Data for 2020 had not yet been posted as of 7/9/2021. More than 80 percent of the population in the district resides in Burleigh and Morton Counties.

2. Caseloads and unusual case types

The South Central Judicial District currently has ten judges and two judicial referees. Each judge is responsible for an equal share of the civil and criminal caseload in district.

Using an interim weighted caseload calculation with annualized filings for 2021, the average weighted caseload data for the years 2020 and 2021 shows a shortage of .55 judicial FTEs for the district. This is included as an attachment at the end of this report.

While there are no unusual case types to consider for this analysis, the impact of the pandemic on case filings must be considered. Case filings decreased during the pandemic, causing the judicial officer need in the district to temporarily decrease. Annualized filings provided by the State Court Administrator's office for 2021 reflect a projected increase to 2019 levels.

3. Trends in population and caseloads

The district as a whole has experienced a 23% population increase since 2000, primarily due to growth in the Bismarck/Mandan area. Burleigh County population increased 38% and Morton County population increased 24% between 2000 and 2019. They now account for more than 80% of the total population in the district. These two counties comprised 74% of the district population in 2000.

County	Census 2000	Census 2010	Estimate 2019	Change since 2000
Burleigh	69,534	81,308	95,626	38%
Emmons	4,302	3,550	3,241	-25%
Grant	2,835	2,394	2,274	-20%
McLean	9,396	8,962	9,450	1%
Mercer	8,597	8,424	8,187	-5%
Morton	25,332	27,471	31,364	24%
Oliver	2,051	1,846	1,959	-4%
Sheridan	1,702	1,321	1,315	-23%
Sioux	4,103	4,153	4,230	3%
District Total	127,852	139,429	157,504	23%

Table 1

Source: Annual Estimates of the Resident Population April 1, 2010 to July 1, 2019.

U.S. Census Bureau, Population Division. <https://factfinder.census.gov/faces/tableservices/>

While case filings in the South Central Judicial District remain consistent with previous years, overall filing numbers have fluctuated. Civil, criminal, and juvenile filings for the last twenty years showed the highest numbers in 2017 at 14,149 and the lowest numbers in 2000 at 9,778. The peak in 2016 and 2017 reflected additional cases filed due to the DAPL protests.

Case filing data (excluding traffic) for the ten year period between 2012 and 2021 shows an overall decrease of 2.3%. Civil, criminal, and juvenile filing totals for that period are shown in Figure 1.

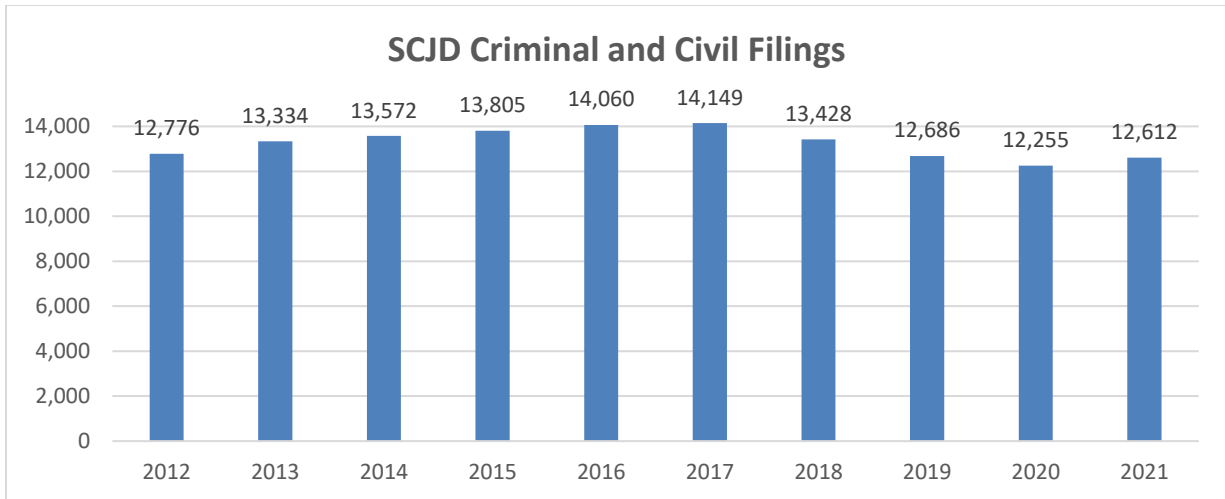


Figure 1

Source: North Dakota State Court Administration Data

Notable trends within the caseload include an overall increase in criminal filings with a significant increase in felony criminal cases as shown in Table 2.

Criminal Filings	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2021/2012
											Change %
Felony	1,331	1,483	1,607	1,923	2,116	1,993	1,935	1,964	1,958	2,134	60.3%
Misdemeanor	4,125	3,969	3,885	3,977	4,466	4,277	3,967	3,911	3,695	3,878	-6.0%
Infraction	159	362	780	175	178	196	134	144	235	268	68.6%
Total	5,615	5,814	6,272	6,075	6,760	6,466	6,036	6,019	5,888	6,280	11.8%

Table 2

Source: North Dakota State Court Administration Data

Civil case filings remained steady overall from 2012 through 2017, but have decreased in recent years as shown in Table 3.

Civil Filings	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Change %
Divorce	510	496	444	526	438	452	501	448	436	418	-18.0%
Child Support	484	490	413	465	462	407	301	266	214	208	-57.0%
Domestic	724	735	740	886	802	819	733	415	478	496	-31.5%
Small Claims	631	780	708	764	656	723	667	718	564	476	-24.6%
Probate	580	682	593	673	638	665	657	558	617	646	11.4%
Mental Health	182	156	159	197	218	256	242	175	187	254	39.6%
Adm. Appeal	57	53	51	57	52	53	35	42	48	40	-29.8%
Other Civil	3,510	3,668	3,756	3,692	3,600	3,895	3,811	3,641	3,452	3,344	-4.7%
Juvenile	483	460	436	470	434	413	445	404	371	450	-6.8%
Total	7,161	7,520	7,300	7,730	7,300	7,683	7,392	6,667	6,367	6,332	-11.6%

Table 3

Source: North Dakota State Court Administration Data

4. Impact of proposed vacancy disposition on travel requirements

The South Central Judicial District is a largely rural geographical area containing nine counties that account for 18% of the land mass of North Dakota.

The South Central Judicial District follows a master calendar and individual calendar rotation. While each of the judges in the district is responsible for an equal share of the caseload throughout the district, more than 96% of the weighted workload is in Burleigh, Morton, McLean, and Mercer Counties. Judges travel to Mercer and McLean counties twice per month for master calendar and once per month for designated trial weeks. Judges travel to smaller counties once per month for master calendar and once per quarter for designated trial weeks.

Elimination of judgeship No. 9 would leave the district with eleven judicial officers to manage a weighted caseload judge need of 12.55 judicial FTEs and increase the amount of travel required of each remaining judicial officer.

5. Age or Possible Retirement of Remaining Judges

While no other judges in the district have announced plans for retirement, Table 4 shows that Judge James S. Hill turned 65 in 2014. Judge David Reich will be 65 in 2021, and Judges Douglas Bahr and Bruce Romanick will turn 65 in the year 2025.

Judgeship #	Name	Birth year	Year Turn 65
1	Reich	1956	2021
2	Bahr	1960	2025
3	Romanick	1960	2025
4	Borgen	1972	2037
5	Feland	1965	2030
6	Weiler	1983	2048
7	Storbakken	1972	2037
8	Hill	1949	2014
9	Grinsteiner (retiring)	1972	2037
10	Nesvig	1978	2043
Referee	Nieuwsma	1985	2050
Referee	Hammes	1978	2043

Table 4

Source: North Dakota State Court Administration

6. Availability of Facilities

All counties in the district have adequate law enforcement officials.

Burleigh, Morton, McLean, and Mercer counties maintain correctional facilities. The Burleigh-Morton Detention Center, the McLean County Jail, and the Mercer County Jail are all classified as Grade I facilities which can hold inmates for up to one year. The other counties in the district utilize these facilities when detention is necessary.

County	Facility	Classification
Burleigh Morton	Burleigh Morton Detention Center	Grade I
McLean	McLean County Jail	Grade I
Mercer	Mercer County Jail	Grade I

All counties in the district maintain court facilities with security provided.

Conclusion

Elimination or transfer of District Judgeship No. 9 would create difficulty in managing the workload of the district. The judgeship is necessary to provide adequate judicial services to the people of the South Central Judicial District.

Respectfully submitted,

Donna Wunderlich

Donna Wunderlich
Trial Court Administrator

Attachment 1

JUDICIAL OFFICER WEIGHTED CASELOAD STUDY														
BASED ON AVERAGE OF 2020 and 2021 CASE FILINGS (Annualized cases as of June 30, 2021)														
Based on Total Judicial Officers as of December 31, 2020														
Case Type	Case Weight	Unit 1			Unit 2			Unit 3			Unit 4			ALL
		NE	NEC	SE	EC	SC	SW	NW	NC					
Criminal Major	181.29	577	774	524	1,997	2,046	296	677	826	7,716				
Criminal Minor	26.48	2,700	1,969	2,227	3,486	4,038	1,591	2,586	1,818	20,414				
Criminal Summary	0.37	9,429	9,803	13,928	13,663	16,797	9,301	11,344	11,281	95,545				
Civil Major	671.05	24	36	38	128	85	28	62	39	438				
Civil Minor	54.86	697	1,006	963	1,849	1,361	408	733	841	7,857				
Civil Summary	6.65	888	1,489	1,177	2,480	2,517	804	1,336	1,537	12,226				
Family Major	152.14	186	265	279	706	555	219	252	405	2,844				
Family Minor	53.63	244	258	266	521	508	124	262	325	2,506				
Family Summary	46.44	25	65	42	98	83	23	42	36	413				
Probate Major	228.76	33	40	80	96	98	27	64	60	497				
Probate Minor	32.02	91	135	224	337	231	86	151	135	1,389				
Probate Summary	9.93	374	163	449	381	524	300	596	396	3,181				
Juvenile Delinquency	106.60	64	132	45	266	149	20	33	29	797				
Juvenile Dependency	239.18	127	182	70	214	198	64	92	182	1,127				
Juvenile - Other	30.00	34	37	52	124	64	21	32	59	421				
Total Filings:		15,491	16,350	20,360	26,345	29,230	13,308	18,259	17,966	157,307				
Weighted Filings		334,165	415,611	356,579	922,505	844,581	216,177	392,169	435,348	3,917,136				
Presiding judge time at 47.14 min/day		9,664	9,664	9,664	9,664	9,664	9,664	9,664	9,664	77,310				
Total workload		343,829	425,275	366,243	932,169	854,245	225,840	401,833	445,012	3,994,445				
Judge Year (Minutes) 205 Days		86,100	86,100	86,100	86,100	86,100	86,100	86,100	86,100	86,100				
Avg. Non-Case time for all judicial FTEs 54.29 min/day		11,130	11,130	11,130	11,130	11,130	11,130	11,130	11,130	11,130				
Adjusted Judge Year (Judge year less non case time)		74,970	74,970	74,970	74,970	74,970	74,970	74,970	74,970	74,970				
Travel Adjustment		-10,250	-2,116	-11,070	-2,888	-5,426	-4,979	-4,774	-4,774	-4,774				
Adjusted min available after travel and non-case		64,720	72,854	63,900	72,082	69,544	69,991	70,196	70,196	70,196				
Number of Judges & Refs total		6.00	5.00	7.00	11.00	12.00	4.00	6.00	6.00	6.00				
Judge Minutes Available		388,320	364,270	447,300	792,897	834,524	279,962	421,173	421,173	3,949,620				
Workload compared to Resources (in minutes)		-44,491	61,005	-81,057	139,272	19,721	-54,122	-19,340	23,839	44,826				
Weighted Case Filing Judicial Officer Need		5.31	5.84	5.73	12.93	12.28	3.23	5.72	6.34	57.39				
Treatment Court Need		0.133	0.399	0.399	0.399	0.266			0.266	1.862				
Total Judicial Officer Need		5.45	6.24	6.13	13.33	12.55	3.23	5.72	6.61	59.25				
Current Total Judges/Referees		6.00	5.00	7.00	11.00	12.00	4.00	6.00	6.00	57.00				
2020/2021 Excess (Shortage) of Judicial FTE		0.55	(1.24)	0.87	(2.33)	(0.55)	0.77	0.28	(0.61)	(2.25)				
2020/21 Percent Excess (Shortage) of Judicial FTE		9.2%	-24.7%	12.4%	-21.2%	-4.6%	19.3%	4.6%	-10.1%	-3.9%				
2019/20 Excess (Shortage) of Judicial FTE		0.58	(1.45)	0.58	(2.27)	(0.51)	0.58	0.00	(0.98)	(3.48)				